Supreme Court, U. S.
FILED
AUG 9 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-186

RESTAURANT INDUSTRIES CORPORATION and MARYLAND CASUALTY COMPANY, *Appellants,*

v.

BARBARA BYLICKI and FLORIDA INDUSTRIAL RELATIONS COMMISSION, *Appellees.*

PETITION FOR CERTIORARI

CHARLES DESMOND CROWLEY
and
FRANK E. MALONEY, JR.
of
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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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PETITION FOR CERTIORARI

COME NOW the Petitioners RESTAURANT INDUSTRIES CORPORATION and MARYLAND CASUALTY COMPANY, pursuant to Rule 19, Rules of the Supreme Court of the United States, and file this their Petition for Certiorari.

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* The FLORIDA INDUSTRIAL RELATIONS COMMISSION has been made a party respondent as required by Florida Law, but it has no interest in the outcome of this Petition for Certiorari.

THE OPINIONS AND ORDERS OF THE COURTS BELOW

(1) Compensation Order entered by the Honorable Arthur S. Seppi, Florida Judge of Industrial Claims, on February 25, 1975.

(2) Order of the Industrial Relations Commission, State of Florida, entered September 26, 1975.

(3) Order of the Supreme Court of Florida entered on March 31, 1976, denying certiorari jurisdiction, and Order of the Florida Supreme Court denying petition for rehearing dated May 28, 1976.

(4) Copies of all Orders and Opinions are not in any official reporter system. Those orders are attached to this Jurisdictional Statement as required by Rule 21 (1).

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

(i) This cause is a Workmen's Compensation case under Florida Statutes, Chapter 440. The Claimant/Respondent BARBARA BYLICKI was a non-immigrant alien of the United States under a B-2 visitor visa. She was prohibited from seeking employment in the United States. Nevertheless, she sought employment and was injured while employed with the Petitioner RESTAURANT INDUSTRIES CORPORATION.

At trial and in every stage thereafter the petitioners challenged her entitlement to Workmen's Compensation benefits and the validity of Section 440.02 (2) (a).

The petitioners have asserted that the statute, as construed, is in violation of their Constitutional rights, the Laws and policies of the United States regarding

aliens, and not in accord with the applicable decisions of this Court.

The Florida courts have consistently upheld that statute in the face of this challenge. Therefore, the petitioners invoke the jurisdiction of this Court, pursuant to 28 USC, § 1257 (3).

(ii) The Order of the Florida Judge of Industrial Claims was entered on February 25, 1975. An appeal was timely filed to the Florida Industrial Relations Commission on March 12, 1975. Copies of those documents are attached hereto. (App., p. 8a)

No rehearing of the Order of the Judge of Industrial Claims or the Florida Industrial Relations Commission is provided for in Florida law.

(iii) This Court has jurisdiction over this case pursuant to 28 USC, § 1257 (3) and Rule 19 (a), Supreme Court Rules.

QUESTION PRESENTED

DID THE FLORIDA COURTS BY AWARDING WORKMEN'S COMPENSATION BENEFITS TO A NON-IMMIGRANT VISITOR ALIEN WHO HAD KNOWINGLY VIOLATED THE FEDERAL LAW BY SEEKING EMPLOYMENT, DECIDE A FEDERAL QUESTION CONTRARY TO THE APPLICABLE DECISION OF THIS COURT AND THE POLICIES OF THE GOVERNMENT OF THE UNITED STATES, AND THUS DEPRIVE THE PETITIONERS OF THEIR RIGHTS UNDER THE UNITED STATES CONSTITUTION?

CONSTITUTIONAL TREATY AND STATUTORY SECTIONS INVOLVED IN THIS CAUSE

United States Constitution

ARTICLE VI

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

ARTICLE I, § 10, cl. 1

SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

AMENDMENT XIV, § 1

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Treaty Between the United States and the Federal Republic of Germany

4 U.S.T. 126 (App., p. 1a)

8 U.S.C.

§ 1101. *Definitions*

(a) As used in this chapter—

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as a trainee; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

§ 1182. *Excludable aliens—General classes*

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens

will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a) (27) (A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a) (3) and 1153(a) (6) of this title, and to nonpreference immigrant aliens described in section 1153(a) (8) of this title;

Florida Statutes

*440.02 *Definitions.*—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(2) "Employee."

(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors whether lawfully or unlawfully employed.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY*

The Respondent BARBARA BYLICKI came to the United States from the Federal Republic of Germany on December 20, 1970. Her status was that of a B-2 visitor for pleasure (TR. 87). The visitor visa upon which Ms. Bylicki was traveling allowed her a maxi-

* To comply with the requirements of the Supreme Court Rules, the petitioners will refer to page numbers in the record-on-appeal before the Florida Industrial Relations Commission which they have requested to be certified to this Court, pursuant to Rule 21, Supreme Court Rules. Said record has been paginated for use before the Florida Industrial Relations Commission and the Florida Supreme Court.

mum period of six months in which to remain in the United States. She was to return to West Germany by June 19, 1971 (TR. 89).

Visitors to the United States on this type of visitor visa are strictly forbidden to seek employment by the Laws of the United States, Title 8 U.S. Code.

Ms. Bylicki ignored this prohibition and sought employment. This was discovered on April 21, 1971, by Mr. Baker, an investigator for the United States Immigration and Naturalization Service.

At that time Mr. Baker found that Ms. Bylicki had obtained employment as a waitress in a quick-service restaurant in Columbia, South Carolina, and had been working there since January 1971 (TR. 89). Mr. Baker prepared an Immigration and Naturalization Form I-213 to commence expulsion proceedings against Ms. Bylicki for her violation of the Immigration and Nationality Act and her violation of the B-2 visitor's visa (TR. 89, 359).

Ms. Bylicki was notified that the expulsion proceedings had been instituted against her by the Immigration and Naturalization Service on April 28, 1971. This notification gave her 30 days in which to voluntarily leave the United States at her own expense without being forceably deported (TR. 358).

Ms. Bylicki telephoned the Immigration Service and requested a one-month extension of her departure date. This extension was granted and she was notified that she had to leave the United States by June 28, 1971, or be deported (TR. 92-93).

After the time had expired in which Ms. Bylicki could have voluntarily left the United States without

facing deportment, it was determined that she was still in this country and that she had ignored the demands of the Immigration Service, *just as she had ignored the prohibition on employment.*

Therefore, on June 30, 1971, the District Director of the Southeastern District of the Immigration Service issued an Order to Show Cause why Ms. Bylicki should not be forceably deported and set forth the charges found against her (TR. 93, 356). The Order set forth that she had overstayed her visitor's visa and had been illegally employed since January 28, 1971, and, thus, she was subject to forceable deportation.

The final hearing was scheduled for July 27, 1971, and then changed to October 4, 1971 (TR. 95). Ms. Bylicki failed to appear for her hearing as required. The Immigration Service then began searching for her but was unable to determine her whereabouts (TR. 95-96). A report on these efforts was prepared by Mr. Baker, the investigator who initially found Ms. Bylicki was in violation of the Immigration and Naturalization Act by illegally obtaining employment (TR. 103). That report is included in the record-on-appeal in this case.

This unexplained disappearance was another of Ms. Bylicki's violations of the Immigration and Nationality Act as all non-immigrant aliens are required to advise the Immigration Service of any change of address within 10 days or, after expulsion proceedings have been started (as they were in this case) the non-immigrant alien is required to advise the Immigration Service prior to any change (TR. 101-102). Ms. Bylicki never notified the Immigration Service of her

whereabouts (TR. 102) and was obviously attempting to elude the Immigration Service.

After Ms. Bylicki became aware of the proceedings against her, she left Columbia, South Carolina, and moved to Fort Lauderdale, Florida. Again, ignoring the prohibition on working, she sought employment and was hired as a waitress by the Petitioner RESTAURANT INDUSTRIES CORPORATION.

By this time she had obtained a social security card by some means. Therefore, the Petitioner RESTAURANT INDUSTRIES CORPORATION had no way of knowing she was an illegal alien or that it was illegal for her to obtain employment.

On October 5, 1972, while working for Petitioner RESTAURANT INDUSTRIES CORPORATION, she slipped and fell, injuring her back. The Petitioner MARYLAND CASUALTY COMPANY provided the Workmen's Compensation Insurance Coverage. Ms. Bylicki filed a claim for Workmen's Compensation benefits under Florida Law, Chapter 440, Florida Statutes.

The case came on for final hearing before the Honorable Arthur S. Seppi, Florida Judge of Industrial Claims, on June 25, 1974. At that hearing Ms. Bylicki testified that she was in the United States on a student visa and that she had received permission to work from the Immigration Service (TR. 29). The Judge of Industrial Claims continued that hearing to allow the petitioners an opportunity to produce rebuttal testimony.

The second hearing was held on August 22, 1974. At that time the petitioners called Mr. Howard Shouldice, an investigator with the Immigration Service (TR.

83). He testified that Ms. Bylicki's status in the United States was that of a non-immigrant visitor for pleasure. He further testified that she was being sought by the Immigration Service so that she could be deported (TR. 102).

Mr. Shouldice testified that individuals in Ms. Bylicki's status are *strictly forbidden to seek employment* while in the United States by the Immigration and Nationality Act.

Ms. Bylicki was then again recalled to the witness stand (TR. 114). At this time she admitted that *she had lied at the first hearing* and that she had never even attempted to obtain a student visa nor had she ever obtained a permit allowing her to seek employment (TR. 114).

Throughout both hearings the petitioners took the position that Section 440.02(2)(a), *F.S.*, which defines "employees" for purposes of the Florida Workmen's Compensation Law, either excluded aliens who had illegally obtained employment or if that section allowed such persons to be entitled to Workmen's Compensation benefits, it was in direct conflict with the petitioners' rights under the United States Constitution, the Immigration and Nationality Act, and the policies of the United States.

Judge Seppi entered an Order based on those two hearings on February 25, 1975 (TR. 362-367, App., p. 8a). That Order found that a challenge had been raised to Ms. Bylicki's entitlement to Workmen's Compensation benefits because her employment was illegal (TR. 364). The judge then ruled that the Florida Workmen's Compensation Law allowed non-resident aliens

who had obtained employment illegally to receive benefits (TR. 365):

> "D. I further find that there is nothing in the Florida Workmen's Compensation Act that would prohibit an alien that was illegally in the United States from becoming an employee as defined by the Act. Therefore, I find that this claimant was, in fact, an employee as defined by the Statute."

The petitioners appealed that Order to the Florida Industrial Relations Commission. Assigned as error was the finding that Ms. Bylicki was entitled to compensation. This entitlement is in direct conflict with the Immigration and Nationality Act and the United States Constitution (pp. 4-6, *supra*).

The Florida Industrial Relations Commission affirmed Judge Seppi on September 26, 1975, thus holding that illegal aliens could receive Workmen's Compensation benefits under the Florida Workmen's Compensation Law (App., p. 15a).

The Florida Industrial Relations Commission is the highest Florida court where an appeal as a matter of right from an Order of an Industrial Claims Judge is allowed.

A Petition for Certiorari was taken to the Florida Supreme Court. This petition asserted that the Florida Industrial Relations Commission had deviated from the essential requirements of law in upholding Section 440.02(2)(a), *F.S.*, in the face of a challenge that the statute section was repugnant to the Constitution, Statutes and Treaties of the United States. This Petition for Certiorari was denied on March 31, 1976 (App., p. 24a).

A Petition for Rehearing was timely filed and denied on May 28, 1976 (App., p. 25a).

REASONS FOR THE ALLOWANCE OF A WRIT OF CERTIORARI WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR RESOLUTION BY THE SUPREME COURT OF THE UNITED STATES.

A. The Florida Courts Have Decided a Substantial Federal Question Contrary to the Laws and Policies of the United States and the Applicable Decisions of the Supreme Court of the United States.

The question of illegal employment by aliens has been one of substantial federal concern since the advent of control of aliens by Congress. A principal purpose of the Immigration and Naturalization Act (INA) is:

> "*to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market . . .*" (Sen.Rept. No. 784, 89th Cong., 1st Sess., page 10 (1965))

This has also been an important historical purpose of the immigration laws of this country. See *Karnuth* v. *U.S.*, 279 U.S. 231, 243 (1929), and is expressly embodied throughout the Immigration and Naturalization Act. See 8 USC, § 1101(a)(15(H) and 8 USC § 1182 (a)(14).

This Court has recently recognized the magnitude and seriousness of the problem of illegal employment by non-immigrant aliens and the effect on the citizens and economy of the United States in *DeCanas* v. *Bica,* 96 S.Ct. 933, ——U.S. ——, 47 L.Ed. 2d 43, 44 L.W. 4235 (1976). In that case the California Court of Appeals affirmed the trial court's holding unconstitutional a California statute which forbid the knowing employ-

ment of illegal aliens and providing penalties against such employers.

This Court reversed the California court's holding and held that the statute was valid. This Court reasoned that the area was not pre-empted by the United States Congress or the Supremacy Clause of the United States Constitution.

In that opinion this Court cited to its various previous decisions where several states had collided with the Federal Government's regulations of aliens and immigration. This Court noted it had held in *Hines* v. *Davidowitz,* 312 U.S. 52 (1966), that the United States Constitution provides the states have no power to add to or take away from the conditions imposed by the United States Congress on the admission of aliens into the United States or what conditions may be imposed upon those aliens while they stay in this country.

Florida is not unlike California. Although Florida has no borders contiguous with any foreign nation, Florida has numerous international ports of entry. Florida, too, has suffered like California, with massive illegal employment by aliens which has caused lawful citizens to suffer.

The decision of the Florida courts in the instant case is not only contrary to those provisions of the Immigration and Nationality Act, but also is in direct conflict with this Court's decision in *DeCanas, supra.* The Florida decision *is an incentive to non-immigrant aliens illegally seeking employment in the United States.*

While the United States Congress, on one hand, has forbidden such employment by non-immigrant visitor

aliens by the Immigration and Naturalization Act and has created the Immigration and Naturalization Service to enforce those laws, Florida has, on the other hand, by its decision in the instant case, encouraged such employment by allowing the alien who has illegally obtained employment to receive Workmen's Compensation benefits if injured on the job.

Aliens who are forbidden to work by the Immigration and Naturalization Act would not so readily seek to violate the laws of the United States if they would not be indemnified for time lost due to injury in the form of Workmen's Compensation benefits or have their medical care paid by their employer and its Workmen's Compensation Insurance Carrier.

Forbidding workmen's compensation benefits to be paid to non-immigrant aliens who violate the United States laws by seeking employment would be consistent with policies of the United States Congress and this Court's decisions in this area. It would also act as a deterrent to such illegal activity by aliens such as Ms. Bylicki.

In recent decision of *Matthews* v. *Diaz,* —— U.S. ——, 96 S.Ct. 1883, 44 L.W. 4748 (Case No. 73 1046, filed June 1, 1976), this Court upheld the denial of Medicare benefits to resident aliens who had not resided in the United States for a minimum of 5 years. In that case the United States District Court for the Southern District of Florida, sitting in Miami, Florida, held that the 5 year residency requirement violated the Due Process Clause of the United States Constitution.

This Court disagreed, holding that the Due Process Clause did not lead to the conclusion that aliens were entitled to enjoy all the advantages of citizenship or,

indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification.

The Florida legislature could have avoided this conflict with Federal Laws and policies by prohibiting the payment of Workmen's Compensation benefits to illegally-employed aliens without violating the Due Process Clause of the United States Constitution. *The Florida legislature has instead run headlong into prohibition against "taking away from the conditions" imposed by the United States Congress on aliens.*

A substantial federal question exists, one of epidemic nature—aliens seeking employment which is forbidden them, and taking jobs from U.S. citizens. The Florida courts have, in effect, reversed this Court's decision in *DeCanas* v. *Bica, supra,* and is enticing illegal activity by aliens.

B. The Decision of the Florida Courts Has Deprived the Petitioners of Their Rights Under the United States Constitution, and Will Continue To Deprive Those Like Situated (Employers and Their Insurance Carriers) in Florida of Their Constitutional Rights.

(1) Impairment of Contract Obligations

When the petitioners entered into the contract for Workmen's Compensation Insurance they had every right to rely upon the existing Federal Law in preparation of the policy as all contracts are entered into with the understanding of the legal obligation set upon the parties by existing statutes and policies of the Federal Government.

It is implicit in the contract of Workmen's Compensation coverage in this case, and in all Workmen's Compensation Insurance policies, that coverage and

liability would be provided only for those employees who were legally employed and not in violation of the Immigration and Naturalization Act.

The employer in this case, as in most situations, would not wish to aid and abet the illegal activity of non-resident visitor aliens. In fact, presently the United States Congress is considering a bill, not unlike the California statute in the *DeCanas* case, *supra,* which would make it a crime to employ illegal aliens and subject the employer to fines for such violations. The purpose of this pending litigation is due to *the huge influx of illegal alien labor*, such as the respondent in this case.

However, many employers, such as the employer in the instant case, have no way of knowing that a would-be employee is a non-resident alien if the applicant presents a social security card.

If the petitioner/employer had discovered that Ms. Bylicki was an illegal alien who was being sought by the Immigration Service and prohibited from working, it could have terminated her employment with impunity.

In the case of *New York State Labor Relations Board* v. *LeCrepe—Number 3, Ltd.,* 355 N.C.S.2d 515 (1973), suit was brought to order an employer to reinstate certain employees that it had terminated. The employer defended on the basis that it had discharged the employees because they were non-immigrant aliens who had not obtained work permits as required by the statute. The Court agreed at page 517:

> "(3) Respondent claimed at the hearing before the trial examiner, and now urges upon this application, that the dismissed employees are non-immigrant aliens as defined in sections 101(a)(15)(B) and 101(a)(15)(C) of the Immigration and Naturalization Law. If in fact they come within either of the classes defined in these sections of the Immigration and Naturalization Law, the order of the Labor Relations Board, insofar as it directs their reinstatement, contravenes Federal policy.
>
> "(4) Under section 214(c) of the Immigration Regulations, such non-immigrant aliens 'may not engage in any employment' (8) CFR (c) 214.(c). 8 U.S.C.A. 1101 (a) (15) (B), (C), and visas issued to them are limited accordingly. It is incumbent upon the Labor Relations Board to comply with these Regulations." (pp. 5-6, *supra*)

In the instant case, had the employer ferreted out and fired Ms. Bylicki, *she would not have been entitled to unemployment compensation because she was supposed to be unemployed!* Yet, the Florida courts have found that Ms. Bylicki is entitled to Workmen's Compensation benefits!

By these decisions the Florida courts have rewritten every Workmen's Compensation Insurance Policy in the State of Florida and have added a new class of employees—a class which the Federal Government has forbidden. These decisions, in fact, force an illegal obligation on both employers and insurance carriers and recognize illegal employment contracts as being enforceable and viable even though such policies are in direct conflict with the Laws of the United States and the policies of this country.

(2) The Denial of Substantive and Procedural Due Process

The petitioners herein, and all employers and carriers throughout the State of Florida, have been deprived of due process of the law by the decisions of the Florida courts.

In the instant case, the facts are uncontradicted that Ms. Bylicki was a non-immigrant alien who was visiting the United States under a visitor's visa for pleasure and was not allowed to work. *At the time she was injured she was a fugitive from the Immigration and Naturalization Service,* the same having revoked her visa, and searching for her so that she could be deported.

The purpose of Workmen's Compensation Laws throughout the United States and in the State of Florida is to compensate those employees who are injured on the job and to pay for those medical costs incurred as a result of that injury. This assumes that the employment is legal.

The Florida courts, by holding that aliens who have illegally obtained employment are entitled to Workmen's Compensation benefits, have, in effect, deprived employers and their insurance carriers of property (the Workmen's Compensation benefits and medical care) without the due process of the law.

The Florida courts have violated due process because they have required employers and insurance carriers to pay compensation benefits to claimants where there should be no obligation and where the claimants are in violation of the Federal Law. To allow this policy to continue in Florida would be a further burden upon the Federal Government and the Immigration and

Naturalization Service and all the citizens of the State of Florida would suffer.

It is respectfully submitted that this Court should grant plenary consideration to this question with briefs on the merits and oral arguments for its resolution.

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APPENDIX

Agreement Between the United States of America and the Federal Republic of Germany

PASSPORT VISA FEES

TIAS 2771
Dec. 12, 30, 1952, and Jan. 9, 1953.

Effected by Exchange of Notes Dated at Bonn December 12 and 30, 1952, and January 9, 1953

Entered into force February 1, 1953

The Office of the United States High Commissioner to the Foreign Office of the Federal Republic of Germany

UNITED STATES HIGH COMMISSIONER FOR GERMANY

The Office of the United States High Commissioner presents its compliments to the Foreign Office of the Federal Republic of Germany and has the honor to transmit the following message.

The Government of the United States understands that the Government of the Federal Republic of Germany is prepared to conclude an agreement for the abolition of visa requirements, but not passport requirements, for American citizens proceeding to Germany who desire to remain therein for a temporary period of time. The Government of the United States is appreciative of the proposed action on the part of the Government of the Federal Republic of Germany, but because of the provisions of Section 212(a)(26)(B) of the Immigration and Nationality Act, [1] which require that each alien applying for admission as a nonimmigrant, except in certain specified cases set forth in Section 212(d)(4) of the Act, be in possession of a valid nonimmigrant visa or a border crossing identification card, the

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[1] Public Law 414; 66 Stat. 184.

Government of the United States is unable to accord identical courtesies to German citizens who desire to proceed to the United States and apply for admission as nonimmigrants. The Government of the United States will however, grant passport visas without fee which may be valid for any number of applications for admission into the United States within a maximum period of twelve months from the date of issuance to eligible German citizens who are *bone fide* nonimmigrants within the meaning of the Act, and who seek to enter the United States and its possessions as nonimmigrants, provided the German passport or the Combined Travel Board travel document of the bearer remains valid during the period of validity of the visa. In the cases of such German citizens who are classified under Section 101(a)(15)(B), (C), (D), and (E), of the Act, the visas may be valid for any number of applications for admission within a period of twenty-four months from date of issuance. It is understood that the aforementioned Combined Travel Board travel document entitles the bearer to enter Germany.

The period of validity of a visa relates only to the period within which it may be used in connection with an application for admission at a port of entry into the United States and its possessions, and not to the length of stay in the United States which may be permitted the bearer after he is admitted. The period of each stay will, as at present, continue to be determined by the Immigration authorities.

The fees for the furnishing and verification of an application for an immigrant visa and the issuance of such visa to permit an alien to apply for admission into the United States and its possessions with the privilege of residing permanently therein, are $25.00; this amount is prescribed by Section 281(1) and (2) of the Act and may not be changed on the basis of an executive agreement.

The Immigration and Nationality Act contains no pravision for the collection of head tax or other taxes at ports of entry into the United States.

Enclosure:

Extracts of the Immigration and Nationality Act.[1]

H J L

MEHLEMER AUE, BAD GODESBERG
December 12, 1952.

The Foreign Office of the Federal Republic of Germany to the Office of the United States High Commissioner

AUSWARTIGES AMT
524-10/80 adh. I V 66 188/52

Das Auswärtige Amt beehrt sich, den Empfang des Schreibens des Amtes des Hohen Kommissars der Vereinigten Staaten vom 12. Dezember 1952 zu bestätigen. Hiernach wird folgende Vereinbarung getroffen:

I. Deutsche, die als bona fide Nicht-Einwanderer nach den Vereinigten Staaten und deren Besitzungen riesen wollen und im Besitz gültiger deutscher Reisepässe oder von Reiseausweisen für Deutsche sind, welche von der Bundesregierung als gültig anerkannt sind, erhalten gebührenfreie Sichtvermerke für eine unbeschränkte Zahl von Einreisen. Die Gültigkeitsdauer dieser Sichtvermerke beträgt

1. 12 Monate

a) für deutsche diplomatische und konsularische Beamte und andere Regierungsbeamte, sowie für Angehörige ihrer Haushaltung,

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[1] Not printed.

b) für deutsche Studenten und in fachlicher Ausbildung stehende Personen,

c) für deutsche Vertreter von Presse, Rundfunk, Film und anderen Nachrichtenmitteln, die die Vereinigten Staaten lediglich zur Ausübung dieses Berufes betreten sowie für ihre Ehefrauen und Kinder,

2. 24 Monate

a) für deutsche Staatsangehörige, die sich in unmittelbarem Transit durch die Vereinigten Staaten befinden oder diese vorübergehend aus Geschäftsgründen oder als Vergnügungsreisende besuchen,

b) für deutsche Seeleute und Bedienstete von Luftfahrtgesellschften,

c) für deutsche Staatansgehörige, die sich mit Handelsgeschäften zwischen den Vereinigten Staaten und Deutschland befassen oder ein Unternehmen leiten oder entwickeln, an dem sie mit einer wesentlichen Kapitalsumme beteiligt sind oder an dem sie sich mit einer wesentlichen Summe beteiligen wollen.

II. Staatsbürger der Vereinigten Staaten, die als bona fide Nicht-Einwanderer in die Bundesrepublik reisen und im Besitz gültiger Reisepässe ihres Landes sind, können ohne einen Einreisesichtvermerk in die Bundesrepublik einreisen.

III. Durch diese Regelung werden im übrigen die für Ausländer geltenden Bestimmungen in der Bundesrepublik und in den Vereinigten Staaten von Amerika über die Einreise, den zeitweiligen und dauernden Aufenthalt und die Beschäftigung von Ausländern nicht berührt.

IV. Diese Vereinbarung tritt am 1. Februar 1953 in Kraft.

BONN, *den 30. Dezember 1952*

[SEAL]

Translation

THE FOREIGN OFFICE
524-10/80 adh. I V 66 188/88

The Foreign Office has the honor to acknowledge receipt of the communication from the Office of the United States High Commissioner of December 12, 1952. In accordance therewith the following agreement has been concluded:

I. Germans who wish to enter the United States and its possessions as *bona fide* nonimmigrants and who are in possession of valid German passports, or travel permits for Germans which are recognized as valid by the Federal Government, may be granted without fee passport visas which shall be valid for an unlimited number of applications for admission. The period of validity of these passport visas shall be

1. 12 months

   a) For German diplomatic and consular officials and other government officials, as well as for members of their households,

   b) For German students and persons undergoing technical training,

   c) For German representatives of the press, radio, film, and other information media, who come to the United States solely for the purpose of engaging in such vocations, as well as for their wives and children;

2. 24 months

   a) For German nationals who are in immediate transit through the United States, or who are temporarily visiting there, for business or pleasure,

   b) For German seamen and employees of airline companies,

c) For German nationals who engage in commercial transactions between the United States and Germany, or who direct or develop an enterprise in which they have invested a substantial amount of capital or in which they wish to invest a substantial amount.

II. United States citizens who come to the Federal Republic as *bona fide* nonimmigrants in possession of valid passports of their country may enter the Federal Republic without a passport visa.

III. However, the provisions applicable to aliens in the Federal Republic and in the United States in regard to admission, temporary or permanent stay, and the employment of foreigners shall not be affected by the present regulation.

IV. This Agreement shall enter into force on February 1, 1953.

BONN, *December 30, 1952*

[SEAL]

The Office of the United States High Commissioner to the Foreign Office of the Federal Republic of Germany

UNITED STATES HIGH COMMISSIONER FOR GERMANY

The Office of the United States High Commissioner presents its compliments to the Foreign Office of the Federal Republic of Germany and, with reference to the exchange of an American Note of December 12, 1952 and a German Note of December 30, 1952 regarding the willingness of the Government of the Federal Republic of Germany to abolish the visa requirement for American citizens in return for the abolition, on the part of the Government of the United States of America, of the visa fee for German nationals, has the honor to state that the Government of the United

States of America agrees to the coming into force of this arrangement, as per the terms contained in the reference Notes, on February 1, 1952.

H J L

MEHLEMER AUE,
BAD GODESBERG.

January 9, 1953.

STATE OF FLORIDA DEPARTMENT OF COMMERCE
DIVISION OF LABOR
BUREAU OF WORKMEN'S COMPENSATION

CLAIM No. 250-06-3783

EMPLOYEE: BARBARA BYLICKI

EMPLOYER: RESTAURANT INDUSTRIES CORP.

CARRIER: MARYLAND CASUALTY COMPANY

D/A: 10/5/72

Order

AFTER DUE NOTICE to the parties, this cause came on before the undersigned Judge of Industrial Claims, for a final hearing on June 24th, 1974. Also, after due notice, this case came on again before the undersigned Judge of Industrial Claims on August 22nd, 1974, on an emergency Motion by the attorney for Claimant to re-instate workmen's compensation benefits. I have received into evidence depositions and other documents presented by the parties, taken the testimony of witnesses presented and I find as follows:

1. That the Judge of Industrial Claims has jurisdiction over the parties and the subject matter herein.

2. That on October 5th, 1972, the Employee, Barbara Bylicki, was employed by the employer herein, as a waitress. It has previously been determined by the Honorable H. A. Soper, Judge of Industrial Claims, on December 27th, 1972, that her average weekly wage was $88.85 per week, and a compensation rate of $53.31 per week.

3. That on said date the employee, Barbara Bylicki, sustained injuries arising out of and in the scope of her employment when she fell and injured her back. Subsequent to said injury, she received treatment from Frank Stuart,

M.D.; Willis Dickens, M.D.; Arnold H. Eichert, M.D.; Paul A. Flaten, M.D.; F. Gary Giesecke, M.D.; Gaetano Lo Presti, M.D.; Robert D. Woolsey, M.D.; Milton E. Harvey, M.D.; Peter Sciarretta, M.D.; and V. Matthew Rao, Chiropractic Physician. Surgery was performed by Dr. Frank Stuart.

4. That subsequent to treatment and surgery, I find that the claimant reached her maximum medical improvement on December 10th, 1973. Her treating physician, Dr. Frank Stuart, testified that he felt that all treatment since that date has been palliative in nature, and that her disability is approximately fifteen or twenty percent of the body as a whole. Dr. Stuart further felt that she might again see Dr. Willis Dickens, or perhaps go to the University of Miami, for an independent evaluation, since she was still either using a walker or crutches.

5. Robert D. Woolsey, M.D., felt that claimant reached maximum medical improvement on August 30th, 1973, and felt that she had sustained a twenty-five percent permanent partial disability to the body as a whole. V. Matthew Rao, Chiropractic Physician, felt that she had reached MMI and had a permanent impairment in the neighborhood of twenty percent of the body as a whole.

6. At the final hearing, the employer/carrier raised the defense that the claimant was not a citizen of the United States, entered the USA on a student visa, had over-extended that stay, and according to the approximate immigration officials was in this County illegally at the time of her accident and, therefore, she was not an employee as defined by the Workmen's Compensation Act.

7. Claim was also made for further medical treatment in accordance with the Florida Workmen's Compensation Act, including, but not limited to, the neurological department at the University of Miami; payment of all past medical

expenses; reimbursement for travel expenses incurred for remedial treatment and costs.

8. Claimant also testified that she had a urological problem and the parties stipulated that she could be seen and/or treated by Dr. Robert Braham, 1112 East Broward Boulevard, Fort Lauderdale, Florida.

9. Claim was also made for a credit of Five Hundred Dollars ($500.00) advanced by the carrier.

10. After considering all of the evidence presented to me, I made the following findings of fact:

A. The Judge of Industrial Claims has jurisdiction of the parties and the subject matter.

B. The stipulation of the parties are approved and stipulated facts are adopted as findings herein, except as noted.

C. On October 5th, 1972, Claimant was employed by this Employer and was an employee as defined by the Act. On this date Claimant sustained a compensable injury arising out of and in the course of her employment which resulted in a compensation rate of $53.31.

D. I further find that there is nothing in the Florida Workmen's Compensation Act that would prohibit an alien that was illegally in the United States from becoming an employee as defined by the Act. Therefore, I find that this claimant was, in fact, an employee as defined by the Statute.

E. I find that Claimant reached maximum medical improvement on December 10th, 1973, and that she has a permanent partial disability equivalent to twenty-five percent of her body as a whole.

F. The Claimant's attorney has rendered valuable services for the Claimant in this instance and I find that he is entitled to an attorney's fee, and I also find that the Carrier is responsible for the taxable costs. The issues of attorney's fees and taxable costs will either be agreed upon between counsel or will be the subject of a further hearing.

G. The Carrier shall be entitled to a credit of Five Hundred Dollars ($500.00) previously advanced by the Carrier.

It is, therefore,

ORDERED AND ADJUDGED by the undersigned Judge of Industrial Claims that the employer/carrier do the following:

1. Pay the bills of the doctors mentioned in paragraph 3 of this Order according to the Medical Fee Schedule.

2. Pay claimant's transportation expenses incident to remedial treatment at the rate of 7½ cents per mile upon presentation of an average statement by the claimant.

3. Pay to the claimant permanent partial disability to the extent of twenty-five percent of her body as a whole beginning with the date of her maximum medical improvement of December 10th, 1973, taking credit for all prior payments.

4. Pay the claimant temporary total disability compensation at the rate of $53.31 per week from October 5th, 1972, to December 10th, 1973.

5. A subsequent hearing will be held on the amount of attorney's fees and costs if same cannot be agreed upon and jurisdiction is retained for that purpose.

6. Pay the cost of this proceeding, including the cost of $40.00, payable to the Workmen's Compensation Administrative Trust Fund, but mailed directly to the Office of the Undersigned Judge of Industrial Claims at Suite 308 Sunrise Professional Building, Fort Lauderdale, Florida 33304.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 25th day of February, 1975.

/s/ ARTHUR S. SEPPI
Judge of Industrial Claims

(SEAL)
cc: Parties

THIS IS TO CERTIFY that the foregoing Order was entered on the 25th day of February, 1975, and that a copy thereof was sent on said date by certified mail to the Claimant and the Employer and by regular mail to all other interested parties at the last known address of each.

DELANE COLBURN
Secretary to Judge of Industrial Claims

FLORIDA DEPARTMENT OF COMMERCE
INDUSTRIAL RELATIONS COMMISSION
TALLAHASSEE, FLORIDA

CLAIM No.: 250 06 3783 D/A: 10-5-72

EMPLOYEE: BARBARA BYLICKI

EMPLOYER: RESTAURANT INDUSTRIES CORP.

CARRIER: MARYLAND CASUALTY COMPANY

Application for Review
Request for Oral Argument

COME Now the employer and carrier, Restaurant Industries Corporation and Maryland Casualty Company, by their undersigned attorney, and file this Application to the Florida Department of Commerce, Industrial Relations Commission, for review by the Industrial Relations Commission of the Order of Judge of Industrial Claims, Arthur S. Seppi, dated February 25, 1975, and for grounds therefor, says:

1. The Judge erred in ordering the employer to pay the claimant compensation and medical benefits even though she had violated some of the provisions of the United States Immigration Laws in that she was illegally employed at the time of the accident in that she was not entitled to work because she was a nonimmigrant who had been admitted from Germany under a visitor's visa.

2. The Judge erred in ordering the employer to pay compensation and medical benefits in that said Order violates the Supremacy Clause of Article VI of the Constitution of the United States.

3. The Judge erred in ordering the employer to pay the complaint compensation and medical benefits in that the contract of employment violated the United States Immi-

gration Laws and thus was an illegal contract and void from the beginning of the contract.

4. Claimant's attorney is not entitled to a fee in that claimant is not entitled to benefits under the workmen's compensation law.

REQUEST FOR ORAL ARGUMENT

The Employer and Carrier respectfully request that oral argument be allowed in the above styled case.

I Hereby Certify that copy hereof has been furnished to T. W. Montgomery, Esq., 201 Courthouse Square Building, Fort Lauderdale, Florida 33301, Attorney for Employee, by mail this 12th day of March, 1975.

/s/ Charles Desmond Crowley
Charles Desmond Crowley
Attorney for Employer/Carrier
300 S. E. 9th Street
Fort Lauderdale, Florida 33316
305 525-3426

STATE OF FLORIDA
INDUSTRIAL RELATIONS COMMISSION

Cl. No. 250-06-3783

D/A 10/5/72

Restaurant Industries Corp., Maryland Casualty Company, Appellants

v.

Barbara Bylicki, *Appellee*

Charles Desmond Crowley, Fort Lauderdale, for Appellants
T. W. Montgomery, Fort Lauderdale, for Appellee

Order

Friday, Commissioner.

The Judge of Industrial Claims entered an Order on February 25, 1975, awarding compensation benefits, and costs, to the claimant/appellee despite her status as an alien illegally over her permitted time within this country. The appellants filed an application for review thereof by the Industria Relations Commission and, on appeal, present the following points:

1. Whether or not an alien, who entered the United States under a visitor's visa and was authorized to stay until June 19, 1971, and who was found to have been working as a waitress on April 21, 1971, and against whom an Order to show cause for her deportation was issued on June 30, 1971, and for whom the immigration service was searching in order to deport her and who became injured while employed on October 5, 1972, is entitled to benefits under the Florida Workmen's Compensation Law.

2. Whether or not the claimant's attorney is entitled to an attorney's fee.

The Commission dispenses with oral argument in this cause pursuant to *Rule 27(c), W. C. Rules of Procedure.*

Having considered this cause upon the record, briefs, and research of the applicable law, and having determined that the Order of the Judge of Industrial Claims is in accord with the essential requirements of law, and that the findings of fact by the Judge are supported by competent substantial evidence which accords with logic and reason, within the meaning of *Pierce* v. *Piper Aircraft Corporation,* 279 So.2d 281 (Fla. 1973), and *U. S. Casualty Company* v. *Maryland Casualty Company,* 55 So.2d 741 (Fla. 1951), the Order dated February 25, 1975, is affirmed.

It is further ordered that the employer, Restaurant Industries Corporation, by and through its insurance carrier, Maryland Casualty Company, pay to the claimant's attorney the sum of Two Hundred Fifty Dollars ($250.00) for services on behalf of the claimant on this review before the Industrial Relations Commission.

It is so ordered.

INDUSTRIAL RELATIONS COMMISSION

SEAL

ELMER O. FRIDAY, JR., Commissioner
LEANDER J. SHAW, JR., Commissioner

This is to certify that on this September 7th, 1975, the above Order was filed in the office of the Industrial Relations Commission at Tallahassee and a copy sent by certified mail to each interested party at his last known address.

INDUSTRIAL RELATIONS COMMISSION
By /s/ V. MARTIN
Clerk

cc: Arthur S. Seppi
Judge of Industrial Claims

IN THE SUPREME COURT OF THE STATE OF FLORIDA

RESTAURANT INDUSTRIES CORP. and MARYLAND CASUALTY COMPANY, Petitioners,

v.

BARBARA BYLICKI and INDUSTRIAL RELATIONS COMMISSION, Respondents.

Petition for Writ of Certiorari to the Industrial Relations Commission

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioners Restaurant Industries Corp. and Maryland Casualty Company present this, their Petition for Writ of Certiorari and state:

1. Petitioners seek to have reviewed the Order of the Industrial Relations Commission dated and filed on September 26, 1975.

2. This Petition is presented under and pursuant to Section 440.27 Florida Statutes and Rule 4.1 of the Florida Appellate Rules, and Article V, Section 3(b)(3) Fla.Const.

3. This Petition includes a certified transcript of the record of the proceedings, the Orders the Petitioners seek to have reviewed and a supporting Brief.

4. The following are the facts of the case:

The claimant came into the United States from Germany on December 20, 1970, as a B-2 visitor for pleasure. (TR. 87)

She was granted the maximum period of time to remain in the United States of 6 months, which was until June 19, 1971. (TR. 89)

On April 21, 1971, a Mr. Baker, an investigator in the United States Immigration and Naturalization Service

found her employed as a waitress in Columbia, South Carolina. (TR. 89) He executed form I-213 which is the commencement of expulsion proceedings for violating her visitor status. (TR. 89) (TR. 359)

The claimant was sent a notice dated April 28, 1971, which rescinded the permission for her to remain in the United States which was previously granted and giving her a period of time to depart voluntarily to on or before May 28, 1971. (TR. 358)

On June 30, 1971, the District Director issued an Order to Show Cause and set out the charges. (TR. 93) (TR. 356) This Order gave Notice of Hearing for July 27, 1971. The Order to Show Cause set forth that she had been admitted from Germany as a German citizen on December 20, 1970, and she had authorization to remain until June 19, 1971; that she was found working as a waitress on April 21, 1971, where she had been employed since 1-28-71 and that she had violated the Immigration and Naturalization Act and was subject to deportation. The hearing was postponed to October 4, 1971. (TR. 95) After that, they were unable to locate Miss Bylicki. (TR. 95-96)

When they start expulsion proceedings, the alien is required to advise of the new address before making any change. (TR. 102) The Immigration Service was looking for her since the middle of 1971. (TR. 102) On January 24, 1973, Investigator Baker wrote a report concerning his attempts to find her. (TR. 103) He had tried to locate her through the Social Security Administration since June 28, 1972. (TR. 103-104)

On October 5, 1972, the claimant was working for the petitioner-employer as a waitress. She slipped and fell and injured her back. The carrier, Maryland Casualty Company, provided compensation and medical benefits to the claimant.

STATEMENT OF THE CASE

A hearing was held before Judge Seppi on June 25, 1974. At that hearing, the claimant stated she had a student's visa and that she had permission to work under the student visa. (TR. 29)

A second hearing was held before Judge Seppi on August 22, 1974, at which time the carrier produced testimony concerning the claimant's status as an alien who had been sought by the Immigration Service for deportation.

The carrier contended that she was not entitled to compensation benefits because her employment was unlawful because it was in violation of the Immigration Act. (Tr. 78)

The Judge entered his Order, dated February 25, 1975, holding that the claimant was entitled to compensation benefits. The carrier has appealed this Order.

5. On the foregoing facts the Industrial Relations Commission was presented with the following points of law:

> WHETHER OR NOT AN ALIEN, WHO ENTERED THE UNITED STATES UNDER A VISITOR'S VISA AND WAS AUTHORIZED TO STAY UNTIL JUNE 19, 1971, AND WHO WAS FOUND TO HAVE BEEN WORKING AS A WAITRESS ON APRIL 21, 1971, AND AGAINST WHOM AN ORDER TO SHOW CAUSE FOR HER DEPORTATION WAS ISSUED ON JUNE 30, 1971, AND FOR WHOM THE IMMIGRATION SERVICE WAS SEARCHING IN ORDER TO DEPORT HER AND WHO BECAME INJURED WHILE EMPLOYED ON OCTOBER 5, 1972, IS ENTITLED TO BENEFITS UNDER THE FLORIDA WORKMEN'S COMPENSATION LAW.
>
> WHETHER OR NOT THE CLAIMANT'S ATTORNEY IS ENTITLED TO AN ATTORNEY'S FEE.

The Industrial Relations Commission had for consideration strictly a question of law. Unfortunately, the Commission did not give any indication of their reasoning in affirming the Order of the Judge who had ordered that the claimant was entitled to compensation benefits. However, the issues that the Commission had to consider are known. The Commission in affirming the Judge ruled incorrectly

on one of the two issues of law in order to arrive at its concluseion.

The first issue of law that the Commission should have decided was whether the claimant's employment was lawful or unlawful. The Commission had to consider Section 440.02(2)(a) which provides:

> " 'Employee' means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors whether lawfully or unlawfully employed."

This Honorable Court in the case of *Smith* v. *Arnold,* 60 So.2d 281 (Fla. 1952) at 282, stated:

> "• • • that the Legislature in using the words 'whether lawfully or unlawfully employed' had reference only to minors who could be lawfully empoyed."

This holding requires that all persons other than children must be lawfully employed in order to recover workmen's compensation benefits. Stating it another way, if a person is not lawfully employed, he cannot recover compensation benefits whereas a child who is lawfully or unlawfully employed can recover compensation benefits.

Since the caimant was an alien, and not a child, the Commission had to decide if the claimant had been lawfully employed. The Commission should, of necessity, have decided that the claimant was unlawfully employed inasmuch as the United States Congress has declared her to be so. The Immigration and Nationality Act, 8 U.S.C.A. Section 1101(a)(15)(B) and the Attorney General's regulations, C.F.R. Section 214.1(c) prohibit a non-immigrant alien in the United States in a Class defined under the Act as a temporary visitor for pleasure, in engaging in any employment. (For Statute and Regulation see Appendix to Brief.) The claimant was in this country under such a visa.

If the Commission ruled as a matter of law that the claimant was lawfully employed, this would be in violation of the Supremacy Clause of Article VI of the United States Constitution because the Federal Government has the exclusive right to pass legislation concerning the activities of non-immigrant aliens in this country.

Since we do not know whether or not the Commission considered the employment to be unlawful, we must at this point consider two possibilities.

The first is that they held the employment to be lawful and in this they were in error because of the Supremacy Clause and the Immigration and Nationality Act. Therefore, their Order should be reversed.

The second possibility is that the Commission concluded that the employment was unlawful. If that was their conclusion and they affirmed the Order of the Judge which required the carrier to pay compensation benefits to the claimant, then, in that event, the petitioners have been deprived of property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and Article I, Section 9 of the Constitution of the State of Florida of 1968; the petitioners have been denied the equal protection of the law as provided by the Fourteenth Amendment of the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Florida of 1968, and the Commission has impaired the obligation of contract guaranteed to the petitioners by Article I, Section 10 of the Constitution of the United States and Article I, Section 10 of the Constitution of the State of Florida of 1968.

Under the Statute as written, the petitioners had no obligation to pay compensation benefits to an alien who is *unlawfully employed.* The Commission in affirming the Order of the Judge will cause to be brought about the violation of the constitutional rights of the petitioners as set

forth about because they will have to pay compensation benefits to the claimant.

Inasmuch as the petitioners should not be required to pay compensation benefits to the claimant, the claimant's attorney should not be entitled to an attorney's fee.

Unless this Honorable Court grants this Petition, the Petitioners will be required to pay to the claimant the compensation benefits ordered by the Judge and to pay for the medical expenses ordered to be paid and also that the illegality complained of shows on the fact of the record. Furthermore, the petitioners are innocent of laches and lack any other sufficient remedy.

Because of the reasons and authorities set forth in Petitioners' Brief, it is believed that the Order hereby sought to be reviewed is erroneous and does not comply with the essential requirements of the law.

WHEREFORE, the Petitioners herein file their Brief in support of the Petition and request this Honorable Court to grant a writ of Certiorari and enter its Order quashing and setting aside the Order of the Industrial Relations Commission and Judge of Industrial Claims and grant such other and further relief as shall seem right and proper to the Court.

Respectfully submitted.

STATE OF FLORIDA
COUNTY OF BROWARD ss:

Before me this 24th day of October, 1975, personally appeared Charles Desmond Crowlay, who, being duly sworn, deposes and says that he is the attorney for the Petitioners and that the facts and statements contained herein are true and correct to the best of his knowledge and belief.

/s/ CHARLES DESMOND CROWLEY
Charles Demond Crowley

Sworn to and subscribed before me this 26th day of October, 1975.

[Signature Illegible]
Notary Public, State of Florida
My com. expires June 14, 1976

CERTIFICATE OF MAILING

I Do CERTIFY that a copy hereof has been furnished by mail to the Industrial Relations Commission, Ashley Building, 1321 Executive Center Drive, East, Tallahassee, Florida 32301, and to T. W. Montgomery, Esq., 290 S. E. 6th Street, Fort Lauderdale, Florida, Attorney for Claimant-Respondent, by mail this 26th day of October, 1975.

/s/ CHARLES DESMOND CROWLEY
Charles Desmond Crowley
Attorney for Petitioners
300 S. E. 9th Street
Fort Lauderdale, Florida 33316
305 525-3426

SUPREME COURT OF FLORIDA

JANUARY TERM, A.D., 1976
WEDNESDAY, MARCH 31, 1976

CASE No. 48,262

INDUSTRIAL RELATIONS COMMISSION

RESTAURANT INDUSTRIES CORP., et al., *Petitioners*

vs.

BARBARA BYLICKI, et al., *Respondents.*

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Industrial Relations Commission and the Court finding no departure from the essential requirements of law, it is ordered that said petition be and the same is hereby denied. See: *Scholastic Systems, Inc., et al. vs. LeLoup, et al.*, 307 So. 2d 166 (Fla. 1974).

Petition for Attorney's Fees filed by the attorney for Respondent Barbara Bylicki is granted; and said attorney is hereby allowed a fee of three-hundred and fifty dollars ($350.00) for services in this Court, said sum to be paid to said attorney by Petitioners after final disposition of this cause.

ROBERTS, Acting Chief Justice, ADKINS, ENGLAND, SUNDBERG and HATCHETT, JJ, Concur

A True Copy
TEST:

TC
cc: Hon. Verna Martin, *Clerk*
Charles D. Crowley, Esq.
T. W. Montgomery, Esq.

/s/
Sid J. White
Clerk Supreme Court

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. 48,262

RESTAURANT INDUSTRIES CORP. and MARYLAND CASUALTY COMPANY, *Petitioners,*

v.

BARBARA BYLICKI and INDUSTRIAL RELATIONS COMMISSION, *Respondents.*

Petition for Rehearing

COME Now the Petitioners and petition the Court for rehearing and for grounds respectfully submit that this Honorable Court may have overlooked the following:

The Court may have overlooked the very recent decision of the Supreme Court of the United States in the case of *DeCanas* v. *Bica*, 44 LU 4235. This case was decided on February 25, 1976. The Petitioners had cited the California State Court citation of this case in its Brief (Page 14).

The U. S. Supreme Court has held in the *DeCanas* case that it was not unconstitutional for California to pass a law making it unlawful for an employer to knowingly hire an alien who would not be permitted to work in the United States under pertinent federal laws and regulations (footnote 2 of Opinion). The Supreme Court concluded that the California statute did not conflict with federal law and that it was consistent with it.

It is submitted that the Orders of the Judge and of the Industrial Relations Commission do not comply with the essential requirements of law because the claimant has been awarded compensation benefits even though the uncontradicted facts establish that she was an alien and not permitted to work under federal law and regulations, and therefore, her employment was unlawful.

Since she was unlawfully employed under the federal law, the award of compensation is in conflict with federal law and unconstitutional. This is so unless benefits can be awarded under the Florida Workmen's Compensation Act to an alien who is unlawfully employed.

It is submitted that Section 440.02(2)(a) which provides:

> " 'Employee' means every person engaged in any employment . . ., including aliens, and also including minors whether lawfully or unlawfully employed."

should be construed to mean that the words "lawfully or unlawfully employed" applies only to minors.

The Petitioners do not know of any Florida case that rules directly on this question. The cases of *Smith* v. *Arnold,* 60 So.2d 281 (Fla. 1952) and *Winn-Lovett Tampa* v. *Murphree,* 93 So.2d 287 (Fla. 1954) are considered by the Petitioners to be persuasive, in favor of the petitioners' contention.

If the statute means that an alien must be lawfully employed to be able to receive compensation benefits, then in the instant case, the Petitioners have been deprived of property without the process of law because the claimant was unlawfully employed under federal law and also under state law because Florida must follow the federal law and hold the employment to be lawful.

The Petitioners contemplate filing a Petition for Writ of Certiorari to the United States Supreme Court in this matter believing that due process of law has been denied them and that the award conflicts with federal law and regulations.

The Petitioners pray that this Honorable Court issue an opinion setting forth for the benefit of the Petitioners and the Bar, its holding on whether the statutory definition of employee includes an unlawfully employed alien.

Inasmuch as there are reportedly millions of aliens unlawfully working in the United States, and some of them in Florida, it is submitted that this is a question of great public interest.

It is submitted that it would be in the public interest particularly in the interest of those millions presently unemployed, if this Honorable Court held that unlawfully employed aliens were not entitled to workmen's compensation in Florida because it would discourage aliens from coming to this country and more specifically Florida, to work unlawfully and would be a step in the same direction as the California statute which attempted to protect its resident labor force. (*DeCanas* v. *Bica,* 44 LW 4235 at 4237)

The Petitioners pray for a rehearing and also a written opinion on the points presented so that further appellate review may be sought and also to provide case law for the benefit of the Bar.

Respectfully submitted.

I CERTIFY that a copy hereof has been furnished by mail to the Industrial Relations Commission, Ashley Building, 1321 Executive Center Drive, East, Tallahassee, Florida 32301, and to T. W. Montgomery, Esq., 200 S. E. 6th Street, Fort Lauderdale, Florida, Attorney for Claimant-Respondent, by mail this 27th day of April, 1976.

/s/ CHARLES DESMOND CROWLEY
Charles Desmond Crowley
Attorney for Petitioners
300 S. E. 9th Street
Fort Lauderdale, Florida 33316
305 525-3426

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, 1976
FRIDAY, MAY 28, 1976

CASE No. 48,262

RESTAURANT INDUSTRIES CORP, et al., *Petitioners,*

vs.

BARBARA BYLICKI, and INDUSTRIAL RELATIONS COMMISSION
Respondents.

On consideration of the Petition for Rehearing filed by petitioners, and Opposition thereto,

IT IS ORDERED that said petition is denied; and it is further

ORDERED THAT THE Motion for Stay filed by petitioners is granted and proceedings in this Court and in the Industrial Relations Commission are hereby stayed to and including June 28, 1976 to allow petitioners to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

Y

cc: Hon. Verna Martin, *Clerk*
Hon. Charles Desmond Crowley
Hon. T. W. Montgomery

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

Fort Lauderdale News, 7/28/76

BILL WOULD FINE BOSSES HIRING ALIENS

THE ASSOCIATED PRESS

WASHINGTON—A bill that would set penalties for businessmen who hire illegal aliens is under consideration by the Senate Judiciary Committee.

The bill, before the panel today, also would seek to equalize the system of selecting immigrants from the Western and Eastern Hemispheres and would require congressional approval before large numbers of refugees could enter the country outside regular immigration quotas.

It is the most far-reaching measure on its kind since the Immigration and Nationality Act of 1965, which abolished the national origins quota system of immigration that critics contended favored northern and western Europeans over other peoples of the world.

To deal with what was described as a huge influx of illegal alien labor, the bill would make an employer of illegal aiens subject to a fine of up to $500 for a first-time vioation and, for a subsequent violation, a fine of up to $1,000 for each alien involved.

Supreme Court, U. S.
FILED
SEP 21 1976
MICHAEL RODAK, JR., CLERK

in the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-186

RESTAURANT INDUSTRIES CORPORATION and
MARYLAND CASUALTY COMPANY,
Appellants,

vs.

BARBARA BYLICKI and
FLORIDA INDUSTRIAL RELATIONS COMMISSION,
Appellees.

REPLY TO PETITION FOR CERTIORARI

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MIAMI REVIEW — 371-4853 — 377-3721

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REPLY TO PETITION FOR CERTIORARI

COMES NOW the Respondent, BARBARA BYLICKI, pursuant to Rule 24, Rules of the Supreme Court of the United States, and files this her Reply to Petition for Certiorari, filed by the Petitioners, RESTAURANT INDUSTRIES CORPORATION and MARYLAND CASUALTY COMPANY.

THE OPINIONS AND ORDERS OF THE COURT BELOW

The Respondent, BARBARA BYLICKI, stipulated to the Opinions and Orders of the Courts as entered by the Petitioners in their Petition for Certiorari.

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

(1) This cause is a Workmen's Compensation case under Florida Statutes, Chapter 440. The Respondent, BARBARA BYLICKI, was a non-immigrant alien of the United States but her status at trial was merely that the Respondent, BARBARA BYLICKI, was under a Rule to Show Cause as to why she should not be deported and no determination had been made at the time of the hearing.

(2) No Florida Court made any determination nor rendered any opinion that violated any Constitutional right, the Laws and our policies of the United States regarding aliens, that was not in accord with any decision of this Court.

QUESTION PRESENTED

DID THE FLORIDA COURTS BY AWARDING WORKMEN'S COMPENSATION BENEFITS TO A NON-IMMIGRANT VISITOR ALIEN WHO HAD KNOWINGLY VIOLATED THE FEDERAL QUESTION CONTRARY TO THE APPLICABLE DECISION OF THIS COURT AND THE POLICIES OF THE GOVERNMENT OF THE UNITED STATES, AND THUS DEPRIVE THE PETITIONERS OF THEIR RIGHTS UNDER THE UNITED STATES CONSTITUTION?

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

The claimant is in the United States as an alien. She is from Germany, although she doesn't think that she is a citizen of Germany. She arrived on December 20th, 1970, in the United States. (TR. 87) She applied for a Social Security number in the month of January 1971. (TR. 33) Her file, kept by the United States Immigration and Naturalization Service, reflects that she was here as a visitor for pleasure.

She was injured on the job on October 5th, 1972, while employed as a waitress for Restaurant Industries Corp., working in a local Lum's.

An Order was entered upon Claimant's Motion for Determination of Average Weekly Wage on December 27th, 1972, finding that the Claimant was employed with the employer on October 5th, 1972, and had an average weekly

wage of $88.85 with a comp rate of $43.31. (TR. 350-354) From December 27th, 1972, through June 25th, 1974, other hearings were held for a determination of medical authorizations.

On June 25th, 1974, a final hearing was held in front of the Honorable Industrial Judge Arthur S. Seppi. At the request of the Employer/Carrier's attorney at the conclusion of the final hearing, the Judge granted him an extension of time to present further evidence with regard to the possible violation of her immigration status. (TR. 71) The Judge instructed the parties that in the meantime her benefits would be maintained. (TR. 72) On August 22nd, 1974, Claimant, by and through her attorney, filed a Motion to Re-Instate Compensation Benefits. Benefits were suspended as of July 26th, 1974. (TR. 76)

At the August 22nd, 1974, hearing the attorney for the Employer/Carrier presented evidence that at the current time, that is August 24th, 1974, the Claimant was under a Rule to Show Cause as to why she should not be deported. (TR. 99) The testimony by Employer/Carrier's witnesses was, in fact, that there were instances when an alien becomes eligible for a non-quota visa where she could be employed. (TR. 98)

REASONS FOR THE ALLOWANCE OF A WRIT OF CERTIORARI WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR RESOLUTION BY THE SUPREME COURT OF THE UNITED STATES

There is no reason for the allowance of a Writ of Certiorari with briefs on the merits and oral argument for Resolution by the Supreme Court of the United States.

A. The Florida Court Has Decided a Substantial Federal Question Contrary to the Laws and Policies of the United States and the Applicable Decisions of the Supreme Court of the United States.

There is no question but that illegal employment by aliens has been a substantial federal concern for years. There is no encouragement to employment of an alien simply because an alien would be entitled to State Workmen's Compensation benefits if they are injured on the job. Any employer who benefits from any employment is not denied any Constitutional right to provide compensation insurance on all employees. The notion that Workmen's Compensation benefits would draw illegal aliens into this Country or that, once in this Country, they are working to receive Workmen's Compensation benefits, is preposterous and unsupported by any facts or reasoning. The position of the alien is very analogous to that of the illegal employed child. An injured employee, legal or illegal, still exists and must be treated, even if he is subsequently deported. The only question is who will pay. The answer is obvious, since Workmen's Compensation premiums are based upon employers' payrolls. In *Heinz v. Davidowitz*, 312 U.S. 52 (1966), this Court felt that the States had no power to change the conditions imposed by Congress upon aliens while in this Country. No decision of the Florida Courts is contrary to this holding.

By allowing an employer and/or its Workmen's Compensation insurance carrier to determine that once employed an illegal alien is not entitled to any workmen's

compensation benefits would seem to entice employers and/or their Workmen's Compensation insurance carriers to employ illegal aliens.

There just isn't any federal question that the Florida Courts have ruled upon that is in conflict with any of this Court's decisions.

B. There is no Decision by the Florida Courts that has Deprived the Petitioners of Their Rights Under the United States Constitution, or Will Continue to Deprive Those Like Situated (Employers and Their Insurance Carriers) in Florida of Their Constitutional Rights.

1. Impairment of Contract Obligations

There is no decision by the Florida Courts that would re-write any Workmen's Compensation insurance policy in the State of Florida nor have they added a new class of employees. Florida has recognized, just as New York did in the case of *Testa v. Sorrento Restaurant, Inc., (Tagminco Corp.)*, 197 New York Sup. 2nd Series, 560 (1960), wherein the Supreme Court, Appellate Division, Third Department, held that an Italian National who had been granted the right to depart the United States voluntarily, in lieu of deportation, was entitled to have an award of workmen's compensation continued notwithstanding the fact that he had entered the United States illegally. The New York Court noted that the history of Workmen's Compensation is in fact one of giving without reservation and wholly regardless of any question of wrong-doing of any kind.

2. The Denial of Substantive and Procedural Due Process

The Petitioners herein fall within a class considered by this Court that are not protected against deprivation without due process.

This Court has always recognized that a corporation cannot claim the protection of the clause of the 14th Amendment inasmuch as the liberty guaranteed by the 14th Amendment is the liberty of natural, not artificial, persons. See *Western Turf Association v. Greenberg*, 204 U. S. 359 (1907).

It is respectfully submitted that this Court should not grant plenary consideration to this Question for Briefs on the Merits and Oral Arguments for its Resolution.

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CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished by mail to the Industrial Relations Commission, Ashley Building, 1321 Executive Center Drive, East, Tallahassee, Florida 32301, and to Charles Desmond Crowley, Attorney for Petitioners, 300 S.E. 9th Street, Fort Lauderdale, Florida 33316, and Frank E. Maloney, Jr., Co-Counsel for Petitioners, of Fleming, O'Bryan & Fleming, American National Bank Building, Fort Lauderdale, Florida 33304, this 20th day of September, 1979.

T. W. Montgomery

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